

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 14233 of Fifth and G Street Restoration Co. Limited Partnership, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Paragraph 7106.11 to change a nonconforming use from a retail furniture repair and reupholstery business, first floor, a restaurant seating less than fifty persons, second floor, an upholstery shop, third floor and a window display sales and service business, fourth floor, to restaurant on first and second floors and general offices on the third and fourth floors and for variances to extend the nonconforming use to the basement to be used as a restaurant (Paragraph 7106.12), to allow structural alterations to a structure devoted to a nonconforming use (Paragraph 7106.12), and to allow an enlargement (lowering of cellar floor) of a structure devoted to a nonconforming use (Paragraph 7106.14) to permit the renovation of the subject building for restaurant and general office use in an HR/SP-2 District at the premises 501 G Street, N.W., also known as 501-9 G Street, N.W., (Square 486, Lot 800).

HEARING DATE: January 23, 1985  
DECISION DATE: February 6, 1985

FINDINGS OF FACT:

1. The application appeared on the preliminary calendar of the Public Hearing of January 23, 1985, since the affidavit of posting was filed one day prior to the Public Hearing instead of five days as required under the Supplemental Rules of Practice and Procedure before the BZA. Counsel explained that the late filing was due to inadvertence. The Board was satisfied that the property had been posted at least fifteen days prior to the public hearing. The Chairperson waived the Rules and the case was heard.

2. The applicant had previously been before the Board with respect to the subject property. In BZA Application No. 13230, the applicant sought the same relief requested in the instant application, except that the applicant now seeks permission to use the second floor, as well as the cellar and first floor, for restaurant purposes. Order No. 13230, dated July 15, 1980, granted special exceptions to permit a nonconforming use to be extended into the cellar and to permit the change of nonconforming use to allow the cellar and first floor to be used as a restaurant, and the second, third and fourth floors to be used as general offices.

Variances were granted to allow structural alterations to a structure devoted to a nonconforming use and to allow an enlargement of a structure devoted to a nonconforming use by lowering the cellar floor.

3. The applicant applied for and received a building permit and commenced renovation of the structure. The applicant's project manager testified that renovation was discontinued in late 1982 due to adverse economic conditions.

4. The Board incorporates by reference all the Findings of Fact and Conclusions of Law contained in Order No. 13230 that pertain to the same relief now being sought in the subject application. A copy of Order No. 13230 is attached.

5. The applicant now proposes to change the existing nonconforming uses so as to use the cellar, first and second floors for a restaurant and the third and fourth floors for general offices.

6. The applicant also proposes to extend the nonconforming restaurant use to the cellar, make structural alterations to the property and enlarge the structure by lowering the cellar floor.

7. The applicant's project manager testified that the restaurant tenant described in Application No. 13230 was forced to withdraw from the project for financial reasons. The applicant has continually attempted to market the building for four years and has been unable to locate a restaurant user for the subject property.

8. The applicant began renovation of building in late 1981 and spent approximately \$25,000 in preliminary construction activity. Because the applicant was unable to locate a replacement tenant for the restaurant use and could not secure any office tenants due to the overabundance of office space in the downtown area, it halted renovations. The applicant's project manager stated that, but for the depressed real estate market of 1981-83, the project would have been completed at that time.

9. It will cost the applicant approximately \$500,000 to renovate the subject site. In addition, the proposed restaurant tenant will expend approximately \$375,000 in additional capital improvements to the site. The cost of the renovation would far exceed what could reasonably be expected in rentals for this area for typical SP District uses.

10. The use of the entire building, including the cellar, is necessary to make the proposed renovation economically feasible. Due to the location of the building and the

rents needed to meet renovation expenses, the building can not be rented to typical SP-2 District uses.

11. The building is in a deteriorating condition and in need of major repair. The roof leakage has damaged the interior of the building and repair work must commence immediately to prevent the loss of the entire building. The planned restoration would retain the historic elements of the building, highlight the building's historic and architecturally significant features and would be compatible with the surrounding area.

12. The applicant's architect testified that in his opinion, the proposed use will not adversely affect the present character or future development of the surrounding area. The proposed uses will not create any deleterious external effects, and the existing nonconforming uses have not been changed to conforming, or more restrictive, uses. The Board so finds.

13. The granting of the special exception will allow for the restoration and reuse of an existing vacant building which is a historic landmark. The special exception, if granted, will be in harmony with the general purpose and intent of the Zoning Regulations and Map and will not adversely affect the use of neighboring property.

14. The variances to permit structural alterations to the structure and to lower the cellar floor are needed to modernize the building and bring it into compliance with the Building and Fire Codes of the District of Columbia. The structural alterations will allow the building to achieve the architectural and historic integrity that justify it being classified as a Category III Landmark. Without the proposed structural alterations, the building could not be reused for modern purposes and would continue to fall into disrepair. By lowering the cellar floor, the applicant can utilize that floor and thus reuse the structure.

15. The existence of the historic landmark on 100 percent of the lot creates an exceptional condition of the property, by which strict application of the Regulations would result in exceptional practical difficulties to the owner. The variances, if granted, would not detrimentally affect the public good or substantially impair the intent, purpose or integrity of the Zoning Regulations and Map.

16. The variance to extend a nonconforming use into the basement is required because of the existence of the historic landmark structure which occupies 100 percent of its lot. These conditions create a situation where strict application of the Zoning Regulations could not be implemented without causing exceptional practical difficulties to the applicant.

17. The president of Republic Foods, Inc., hereinafter referred to as "Republic," testified that the applicant proposes to lease the cellar, first and second floors to Republic, a local franchisee of Burger King. Republic's operation in the subject property will result in a restaurant whose interior will reflect the historic era in which the building was built. Plans call for the kitchen and serving counter to be located on the first floor, along with seating for approximately 40 persons. The second floor will be a dining area for approximately 110 persons. The cellar will be used for ancillary restaurant space. Without the use of the cellar for ancillary restaurant purposes, the building would be unuseable by Republic's operation.

18. Due to the character of the neighborhood, almost all of the restaurant traffic would be pedestrian, not vehicular, in nature. The restaurant would employ approximately 100 persons and Republic would use the District of Columbia Department of Employment Services as its source of hiring.

19. The Office of Planning (OP), by report dated January 16, 1985, recommended approval of the application. The OP reported that the applicant's proposed change of nonconforming uses would reduce the degree of nonconformity at the subject premises and would facilitate the restoration and reuse of an existing, vacant designated historic structure. In addition, the proposed restaurant would provide a convenient, inexpensive eating establishment for nearby office workers. The OP reported that vehicular traffic will be minimal because most of the patrons will be pedestrians from local office buildings. The OP also noted that, because the property is located within the area regulated by the Shipstead-Luce Act and the property is a Category III Historic Landmark, adequate design review will ensure that the restoration, including exterior signage, will be compatible with the surrounding area and the historical character of the structure. With respect to the applicant's request for a special exception, the OP was of the opinion that the proposed use would not adversely affect the present character or future development of the surrounding area. The applicant's practical difficulties, if forced to comply with the strict application of the Zoning Regulations, result from the structure occupying 100 percent of the lot, the structure's designation as a Category III Historic Landmark, and the necessity for structural alterations to return the building to a usable condition. Additionally, the OP reported that conditions have not changed since the Board granted essentially the same relief in Application No. 13230. The Board concurs with the findings and recommendation of the Office of Planning.

20. There was no opposition to the application at the public hearing or of record.

21. Advisory Neighborhood Commission 2C made no recommendation as to the application.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, and on the above Findings of Fact, the Board concludes that the applicant is seeking a special exception and three variances. To grant the special exception, the Board must conclude that the applicant has complied with the requirements of Paragraph 7106.11 of the Zoning Regulations. The Board concludes that the applicant has met these tests, in that the proposed restaurant and general office uses are permitted in the most restrictive zone in which the existing nonconforming uses are permitted. Restaurant and office uses are first permitted as a matter-of-right in a C-1 District. Of the four existing nonconforming uses, all but the restaurant uses is first permitted in the C-2 District. Restaurant use is first permitted in the C-1 District.

The Board further concludes that the proposed restaurant use will be a neighborhood facility in that it will serve primarily the office population in the immediate neighborhood. The proposed restaurant use, unlike the proposed office uses, represents an intensification of the prior restaurant use because of the greater number of persons it proposes to serve. However, the Board concludes that the proposed restaurant use will not have significant negative effects, in that the noise, odor and waste coming from the building will be limited and little automobile traffic will be generated since the primary users of the restaurant will be neighborhood workers who will walk to the property. The Board further notes that, as found in its prior order, there are numerous parking lots in the neighborhood.

The Board further concludes that the proposed use will not create any deleterious external effects, including, but not limited to, noise, traffic, parking and loading considerations, illumination, vibration, odor and design and siting effects. The Board concludes that the proposed general office and restaurant uses will not have an adverse affect on the present character or future development of the surrounding area and that the uses are consistent with the general purpose and intent of the Zoning Regulations and Map.

As to the variances requested by the applicant, the Board concludes that these are area variances, the granting of which requires the showing of a practical difficulty upon the owner that arises from the condition of the property itself. The Board notes that the building occupies 100 percent of the site and has done so since 1889. Evidence in the record reflects that the building was built for commercial use and has never been used for residential purposes.

A significant factor in the historic importance of the structure is that it is one of the few remaining examples of a commercial structure built in the Second Empire architectural style. Further, the structure has been designated as a Category III Landmark and, as such, the use and alteration of the building is severely restricted. The applicant has submitted persuasive evidence that restoration of the building is economically feasible only if the additional cellar restaurant space is allowed. While economic hardship alone does not constitute a practical difficulty sufficient to justify the grant of the area variances, the marketability of the building and the costs of restoring it to productive use are relevant factors to be considered.


Because of the constraints of the subject property, the existence of a Category III Landmark occupying 100 percent of the lot, strict application of the Zoning Regulations would result in exceptional practical difficulties to the applicant. The practical difficulty is inherent in the property. The Board further concludes that the variances can be granted without substantial detriment to the public good, and without substantially impairing the intent, purpose and integrity of the zone plan.

Accordingly, it is ORDERED that the application for a special exception and variances is hereby GRANTED in its entirety.

VOTE: 4-0 (Charles R. Norris and William F. McIntosh to grant, Patricia N. Mathews and Carrie L. Thornhill to grant by proxy; Douglas J. Patton not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

  
STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER:

20 MAY 1985

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECT DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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